

outcomes well enough to ensure the desired level of cost sharing (*see* example in § 37.560(b)); and

(c) Your TIA does not require a specific amount or percentage of recipient cost sharing. In cases where the agreement does require a specific amount or percentage of cost sharing, a fixed-support TIA is not practicable because the agreement has to specify cost principles or standards for costs that may be charged to the project; require the recipient to track the costs of the project; and provide access for audit to allow verification of the recipient's compliance with the mandatory cost sharing. You therefore must use an expenditure-based TIA if you:

(1) Have a non-waivable requirement (*e.g.*, in statute) for a specific amount or percentage of recipient cost sharing; or

(2) Have otherwise elected to include in the TIA a requirement for a specific amount or percentage of cost sharing.

§ 37.310 When would I use an expenditure-based TIA?

In general, you must use an expenditure-based TIA under conditions other than those described in § 37.305. Reasons for any exceptions to this general rule must be documented in the award file and must be consistent with the policy in § 37.230 that precludes payment of fee or profit to participants.

§ 37.315 What are the advantages of using a fixed-support TIA?

In situations where the use of fixed-support TIAs is permissible (*see* §§ 37.305 and 37.310), their use may encourage some commercial firms' participation in the research. With a fixed-support TIA, you can eliminate or reduce some post-award requirements that sometimes are cited as disincentives for those firms to participate. For example, a fixed-support TIA need not:

(a) Specify minimum standards for the recipient's financial management system.

(b) Specify cost principles or standards stating the types of costs the recipient may charge to the project.

(c) Provide for financial audits by Federal auditors or independent public

accountants of the recipient's books and records.

(d) Set minimum standards for the recipient's purchasing system.

(e) Require the recipient to prepare financial reports for submission to the Federal Government.

Subpart D—Competition Phase

§ 37.400 Must I use competitive procedures to award TIAs?

DoD policy is to award TIAs using merit-based, competitive procedures, as described in 32 CFR 22.315:

(a) In every case where required by statute; and

(b) To the maximum extent practicable in all other cases.

§ 37.405 What must my announcement or solicitation include?

Your announcement, to be considered as part of a competitive procedure, must include the basic information described in 32 CFR 22.315(a). Additional elements for you to consider in the case of a program that may use TIAs are described in §§ 37.410 through 37.420.

§ 37.410 Should my announcement or solicitation state that TIAs may be awarded?

Yes, once you consider the factors described in subpart B of this part and decide that TIAs are among the types of instruments that you may award pursuant to a solicitation, it is important for you to state that fact in the solicitation. You also should state that TIAs are more flexible than traditional Government funding instruments and that provisions are negotiable in areas such as audits and intellectual property rights that may cause concern for commercial firms. Doing so should increase the likelihood that commercial firms will be willing to submit proposals.

§ 37.415 Should I address cost sharing in the announcement or solicitation?

To help ensure a competitive process that is fair and equitable to all potential proposers, you should state clearly in the solicitation:

(a) That, to the maximum extent practicable, the non-Federal parties